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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:	Case No. 09-17390-bam
JAMES R. THOMAS	Chapter 11
and	Hearing Date: November 16, 2009
DANIELLE THOMAS,	Hearing Time: 9:00 A.M.
Debtors.	Courtroom: 3

**MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF
SPECIALIZED LOAN SERVICING PURSUANT TO 11 U.S.C. §506(a) AND §1123**

TO: THE HONORABLE BANKRUPTCY JUDGE BRUCE A. MARKELL

JAMES R. THOMAS and DANIELLE THOMAS (hereinafter referred to as "Debtors"),
by and through their attorneys, COLEMAN LAW ASSOCIATES, A PROFESSIONAL LAW
CORPORATION, move this Court pursuant to 11 U.S.C. §506(a) AND §1123, and Bankruptcy
Rules 3012 and 9014 and state:

STATEMENT OF FACTS

- Debtors filed a Voluntary Petition under Chapter 11 of the United States Code, Case
Number 09- 17390-lbr on May 8, 2009.
- On the petition date, Debtors owned real property located at 9721 Falling Star

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1 Avenue, Las Vegas, NV 89117, as their primary residence (hereinafter referred to as “**Subject**
2 **Property**”).

3 3. The estimated value of the Subject Property was \$256,212.00 at the time the
4 instant petition was filed.

5 4. The current value of the Subject Property is \$251,955.00 (See Property Valuation,
6 attached hereto as **Exhibit “A”** and incorporated for reference).

7 5. At the time of filing the instant petition, the Subject Property was subject to the
8 following liens:

9 A. AMERICA’S SERVICING COMPANY, Account No.
10 **xxxxxx0298**, (First Mortgage and/or First Deed of Trust):
11 FOUR HUNDRED FIFTY-ONE THOUSAND, NINE
12 HUNDRED FORTY-TWO DOLLARS AND SEVENTY-
13 FIVE CENTS (\$ 451,942.75). (See Proof of Claim No.10,
14 attached hereto as **Exhibit “B”** and incorporated for
15 reference).

16 B. SPECIALIZED LOAN SERVICING, Account No.
17 **xxxxxx0169**, (Second Mortgage and/or Second Deed of Trust):
18 ONE HUNDRED TEN THOUSAND, FOUR HUNDRED
19 FIFTY-EIGHT DOLLARS AND ZERO CENTS.
20 (\$110,458.00).

21 6. Therefore, on the date the instant bankruptcy was filed, no equity existed in the
22 Subject Property above the claims of AMERICA’S SERVICING COMPANY.

23 7. SPECIALIZED LOAN SERVICING’s claim was wholly unsecured on the date of
24 filing the instant petition and if the Subject Property was sold at auction, SPECIALIZED LOAN
25 SERVICING would receive nothing.

26 LEGAL ARGUMENT

27 8. 11 U.S.C. §506(a) provides that a creditor’s claim is only *secured* to the extent of
28 the property value: “a lien on property ... is a secured claim to the extent of the value of such

1 creditor's interest ... and is an unsecured claim to the extent that the value of such creditor's interest
2 is less than the amount of such allowed claim."

3 9. In *In re Zimmer*, 313 F.3d 1220 (9th Cir.2002), the Court stated that a wholly
4 unsecured lien holder's claim can be modified and reclassified as a general unsecured claim
5 pursuant to 11 U.S.C. §506(a). Specifically, the Court held:

6 Section 506(a) divides creditors' claims into "secured
7 claims" and "unsecured claims." Although the conventional
8 interpretation of "secured" might include any claim in which
9 the creditor has a security interest in the Debtor's property,
10 §506(a) makes clear that the status of a claim depends on the
11 valuation of the property. An allowed claim of a creditor
secured by a lien on property in which the estate has an interest
... is a secured claim to the extent of the value of such creditor's
interest in the estate's interest in such property ... and is an
unsecured claim to the extent that the value of such creditor's
interest ... is less than the amount of such allowed claim.

12 To put it more simply, a claim such as a mortgage is not a
13 "secured claim" to the extent that it exceeds the value of the
14 property that secures it. Under the Bankruptcy Code, "secured
15 claim" is thus a term of art; not every claim that is secured by
16 a lien on a property will be considered a "secured claim". Here,
it is plain that PSB Lending's claim for the repayment of its
loan is an unsecured claim, because its deed of trust is junior to
the first deed of trust, and the value of the loan secured by the
first deed of trust is greater than the value of the house.

17 10. Accordingly, since SPECIALIZED LOAN SERVICING's claim is wholly unsecured
18 (in that there is no extant equity above the first mortgage in the Subject Property), the Court should
19 reclassify SPECIALIZED LOAN SERVICING's claim to a general unsecured claim to receive
20 payments pro rata with like unsecured creditors. SPECIALIZED LOAN SERVICING should also
21 be stripped of its secured rights under 11 U.S.C. §506(a) since no maintainable security interest in
22 the Subject Property exists.

23 11. Further, the Debtor is not required to file an adversary proceeding to achieve the
24 requested relief herein. Debtor may bring a motion to "strip off" SPECIALIZED LOAN
25

SERVICING's consensual lien by motion. See *In re Williams*, 166 B.R.615 (Bankr.E.D.Va.1994),
In re Fuller, 255 B.R. 300 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693
(Bankr.E.D.Mich.2001), *In re King*, 290 B.R. 641 (Bankr.C.D.Ill.2003), *In re Millsbaugh*, 302 B.R.
90 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin. (In re Dickey)* 293 B.R. 360 (Bankr.M.D.Pa.2003),
In re Hill, 304 B.R. 800 (Bankr.S.D. Ohio 2003); *In re Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003),
In re Fisher, 289 B.R. 544 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R. 545
(Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843 (Bankr.W.D.Ky.2004). Instead, Debtor may
bring the instant motion.

WHEREFORE, Debtor prays that this Court:

1. Find that SPECIALIZED LOAN SERVICING is not a holder of a lien on the Subject Property.
2. Immediately avoid, "strip off", cancel and extinguish SPECIALIZED LOAN SERVICING's wholly unsecured claim/lien from the Subject Property pursuant to 11 U.S.C. Section 506(a).
3. Reclassify SPECIALIZED LOAN SERVICING's claim as a general unsecured claim, subject to allowance if disputed, to be paid pro rata with other general unsecured creditors through the Debtor's Chapter 11 Plan; and
4. Such other relief as the Court finds appropriate.

DATED this 13th day of October, 2009.

COLEMAN LAW ASSOCIATES, APLC

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LIST OF EXHIBITS

EXHIBIT A:

PROPERTY VALUATION

9721 Falling Star Avenue
Las Vegas, NV 89117

EXHIBIT B:

PROOF OF CLAIM No.10

U.S. Bankruptcy Court Claim #10 - filed by Creditor, AMERICA'S SERVICING COMPANY